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Human Rights Committee

Concluding observations on the initial report of Macao, China

Addendum

Information received from Macao, China, on follow-up to the concluding observations*

[Date received: 5 April 2014]

Paragraph 7 of the concluding observations

The Committee takes note of the recent amendments adopted in 2012 by Macao, China to the Method for the Selection of the Chief Executive (Annex I to the Basic Law), according to which the membership of the Election Committee mandated to elect the Chief Executive has been extended from 300 to 400. The Committee recalls that article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, and that article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant (CCPR/C/21/Rev.1/Add.7, paragraph 1). While recognizing the reservation to article 25 (b) of the Covenant, the Committee regrets that Macao, China has not expressed its intention to institute universal suffrage to ensure the right of all persons to vote at genuine elections and to stand for election without unreasonable limitations nor indicated any timeline for the introduction of such an electoral system. The Committee is also concerned about Macao, China's position in maintaining its reservation to article 25(b) of the Covenant (articles 2, 25 and 26).

Macao, China should consider taking all preparatory measures with a view to introducing universal and equal suffrage in conformity with the Covenant as a matter of priority. Macao, China should outline a clear and comprehensive plan of action and set timelines for the transition to an electoral system based on universal and equal suffrage that will ensure enjoyment by all its citizens of the right to vote and to stand for election in compliance with article 25 of the Covenant, taking due account of the Committee's

* The present document is being issued without formal editing.

general comment No. 25 (1996). It is recommended to consider steps leading to withdrawing the reservation to article 25(b) of the Covenant.

Relevant information on the implementation of the recommendations in paragraph 7

1. Concerning the Committee's suggestion on withdrawing the reservation to Article 25(b) of the Covenant, the Macao SAR Government holds that the aforementioned suggestion does not comply with the current political system of the Macao SAR. In fact, when the Central People's Government of the People's Republic of China delivered a note to the depositary of the Covenant regarding the continuous application of the Covenant in the Macao SAR in 1999, four declarations, which conformed to the provisions relating to reservations of the 1969 Vienna Convention on the Law of Treaties, including the reservation to Article 25(b) of the Covenant, were made pursuant to the relevant provisions of the Basic Law and the legal status and actual situation of the Macao SAR.

Paragraph 11 of the concluding observations

While the Committee welcomes the actions of the judiciary in blocking the transfer of a person to mainland China (case No. 12/2007, Decision of the Court of Final Appeal), it is concerned that, despite its previous recommendation (CCPR/C/79/Add.115, para. 14), Macao, China has not adopted any specific regulations regulating the transfer of offenders from Macao, China to mainland China to protect those persons against the risk of death penalty or ill-treatment upon return. The Committee takes due note of the Macao, China's assertion that negotiations with mainland China on this matter are ongoing (articles 6, 7, 9, 10 and 14).

The Committee reiterates its previous recommendation, and urges Macao, China to pursue the negotiations with mainland China with a view to reaching a firm agreement on the transfer of offenders from Macao, China to mainland China as a matter of priority. Macao, China should ensure that the agreement is in line with Macao, China's obligations under articles 6 and 7 of the Covenant.

Relevant information on the implementation of the recommendations in paragraph 11

2. Article 93 of the Basic Law of the Macao Special Administrative Region provides that the Macao Special Administrative Region may, through consultations and in accordance with law, maintain judicial relations with the judicial organs of other parts of the country, and they may render assistance to each other. In accordance with the provision of that Article, the Working Group of Regional Legal Assistance and International Mutual Legal Assistance of the Macao SAR Government has already negotiated with the relevant authorities of Mainland China with regard to the specific content and procedures of the arrangement for legal assistance in criminal matters several times and will continue to study and negotiate on the arrangement for legal assistance in criminal matters, including the arrangement for the surrender of fugitives.

Paragraph 17 of the concluding observations

While welcoming the legal framework in place for the protection of the rights of migrant workers, the Committee remains concerned at the practice of employing migrant workers in

the absence of formal contracts, at the excessive fees that may be requested from them by recruitment agencies, and the payment of lower wages compared to local workers; all these factors make migrant workers vulnerable and expose them to abuses and exploitation. The Committee is also concerned at the lack of effective legal recourse against unfair dismissal or unpaid wages (articles 2, 8 and 26).

Macao, China should strengthen the protection of rights of migrant workers against abuses and exploitation and establish affordable and effective mechanisms to ensure that abusive employers or recruitment agencies are held accountable.

Relevant information on the implementation of the recommendations in paragraph 17

3. With regard to labour contracts established with non-resident workers, pursuant to paragraphs 1 to 3 of Article 23 of Law no. 21/2009, Law for the Employment of Non-Resident Workers, employment contracts concluded with non-resident workers shall be made in writing and shall include content such as the non-resident workers' working conditions, remuneration and so forth. There shall be two copies of the contract, with the employer and the employee holding a copy each. When the Human Resources Office reviews an employment permit application for hiring a non-resident worker, the Office will also review the working conditions and remuneration which the employer has planned to offer the worker. If the employer did not conclude an employment contract in writing with the non-resident worker or if the working conditions given by the employer to the non-resident worker are less favourable than those stated in the employment permit application, pursuant to paragraph 2(1) and (2) of Article 32 of the same law, the employer shall be punished with a fine between MOP5,000 and MOP10,000 per worker involved in each violation, and the employer may at the same time be subject to accessory sanctions stated in paragraph 1(1) of Article 33, i.e. the revocation of all or part of the employment permits issued to the employer, along with the suspension of the right to request new employment permits for a period of six months to two years. Nevertheless, in any circumstance, if the employee has started working, the absence of a formal employment contract in writing does not impair his/her right to remuneration.

4. In relation to employment agencies' collection of service charges from non-resident workers, pursuant to Article 17(3) of Decree-Law no. 32/94/M, Licensing System for Employment Agencies, employment agencies are prohibited from charging fees from non-resident workers other than accommodation fees, which shall not exceed one-sixth of a non-resident worker's monthly remuneration. Shall an employment agency be proved to have violated the relevant provisions, the Labour Affairs Bureau may impose a fine between MOP10,000 and MOP30,000 on the offender for each worker involved in the violation pursuant to paragraph 1(c) of Article 22 of the aforementioned Decree-Law.

5. As regards the remuneration of non-resident workers, Article 20 of the Law for the Employment of Non-Resident Workers distinctly stipulates that the general regime for labour relations, which regulates local workers, is subsidiarily applicable to the labour relations established with non-resident workers, particularly issues relating to rights, obligations and protection. Therefore, it is apparent that the basic legal protection provided for both non-resident workers and local workers is the same.

6. The provision of equality of remuneration was established in both the Framework Law on Employment Policy and Workers' Rights and the Law for the Employment of Non-Resident Workers, guaranteeing the rights of non-resident workers to enjoy the rights, obligations and working conditions which are not less favourable than those of local workers and that both non-resident workers and local workers receive equal remuneration

for equal work or work of equal value. In addition, Article 26 of the Law for the Employment of Non-Resident Workers stipulates that non-resident workers are entitled to suitable accommodation and the right to receive payments from their employers corresponding to the costs of transportation to the workers' usual places of residence upon termination of the labour relations. Order of the Chief Executive no. 88/2010 sets the minimum hygiene and living standards for the accommodation for non-resident workers. For instance, the accommodation of each non-resident worker must have a floor area not smaller than 3.5 square meters in average and a group of eight non-resident workers or less must be provided with a bathroom with hot and cold shower facilities and so forth. A non-resident worker's right to accommodation can be assured by his employer by means of payment in cash and the amount shall not be lower than MOP500 per month.

7. If an employer dismisses a worker without just cause, whether the worker is local or non-resident, the employer must, pursuant to paragraph 5 of Article 70 and Article 72 of the Labour Relations Law, pay dismissal compensation and give prior notice to the dismissed employee. If an employer owes workers remuneration, pursuant to paragraph 1(6) of Article 85 of the Labour Relations Law, the employer shall be punished with a fine of MOP20,000 to MOP50,000 for each worker involved and pursuant to Article 87 of the same law, the aforementioned fine imposed on the employer is convertible into imprisonment under the Penal Code. Furthermore, if non-resident workers believe that their rights and interests are infringed, they can lodge complaints with the Labour Affairs Bureau as local workers do and the Bureau will handle and follow up the complaints in line with its scope of functions. Hence, it is apparent that the existing laws have already offered non-resident workers effective protection for their labour rights and interests and the right to appeal to law.